COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 1, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the CASE NO. PUE-2002-00174

STATE CORPORATION COMMISSION

Ex Parte: In the matter concerning
the aggregation of retail electric customers
under the provisions of the
Virginia Electric Utility Restructuring Act

ORDER INVITING COMMENTS

By Order dated March 18, 2002, the Virginia State Corporation Commission ("Commission") established an investigation for the purpose of developing and refining policies, rules, and regulations for the provision of aggregation service. We directed that the following three areas of concern be explored: (i) licensing of aggregators, (ii) contractual relationships between aggregators and their customers (and also as between aggregators and suppliers or other aggregators), and (iii) the impact of incumbent electric utilities' relationships with their aggregator affiliates on the development of effective competition within the Commonwealth.

Specifically, we directed the Staff of the Commission ("Staff ") to conduct this investigation with input from a working group ("Work Group") comprised of interested parties and stakeholders, and previously assembled in the Commission's proceeding that developed proposed rules governing retail access to competitive energy services.[1] Additionally, we directed that, on or before August 1, 2002, the Commission Staff file a report concerning the results of its

[1] Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules for retail access, Case No. PUE0100013 (Commission Order adopting rules entered on June 19, 2001).

investigation, together with any proposed changes to the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules") 20 VAC 5-312-10 et seq. On August 1, 2002, the Staff filed its report ("Report") outlining the issues examined in the course of its investigation directed by the Commission, and recommendations relating thereto.

The Report states, *inter alia*, that the Staff and Work Group[2] discussed a proposal to clarify the definition of aggregator in § 56-576 by removing references to purchasing or offering to purchase electricity as falling within the scope of aggregation activity. Some Work Group participants said this language might cause local distribution companies ("LDC") to subject aggregators completely uninvolved in the purchase of electricity to the complete competitive supplier registration process, including those relating to financial security and electronic data interexchange ("EDI"). The Staff, however, did not recommend amending the statute as proposed, noting that 20 VAC 5-312-20 A of the Commission's retail access rules currently enable persons seeking aggregator licensure to request waivers. The Staff concluded that the waiver process is an appropriate means of fine-tuning a license applicant's obligations vis-à-vis LDCs.

The Staff's Report also reviewed the question of aggregator licensing under § 56-588 with respect to those persons engaged *solely* in marketing activities on behalf of licensed aggregators or suppliers. For example, the Report notes, trade associations might conduct marketing activities on behalf of licensed suppliers or aggregators, and receive compensation for those activities from these suppliers or aggregators. Guided by the definition of aggregator in

[2] The Work Group participants included: Rappahannock Electric Cooperative; Southside Electric Cooperative; Dominion Virginia Power; Dominion Resources; Energy Consultants, Inc.; American Electric Power; Imagine Communications; Allegheny Energy; Allegheny Power; Community Electric Cooperative; Virginia Manufacturers Association; Columbia Gas of Virginia; Shenandoah Valley Electric Cooperative; Virginia, Maryland, & Delaware Association of Electric Cooperatives; and the Division of Consumer Counsel, Office of the Attorney General.

§ 56-576 of the Restructuring Act, the Staff concluded that aggregator licensing should not be required for persons engaged solely in such marketing.

In support of that conclusion, the Staff distinguishes in its Report between those persons *promoting* a provider of competitive services, and those actually *providing* those services (whether it be as suppliers or as aggregators), stating that such a distinction results from a sensible construction of §§ 56-576 and 56-588 of the Restructuring Act. Thus, the Staff concluded that legislation is not required to keep marketing activities *on behalf of* aggregators or suppliers outside the aggregator licensing scheme.

The Staff does note, however, that licensed aggregator and suppliers are responsible for marketing activities conducted on their behalf by third parties, to the extent that these activities result in harm to the public. Such responsibility would be enforced, in the Staff's view, through the provisions of § 56-593—the Restructuring Act's provisions prescribing remedies for "any deceptive or unfair practices in providing, distributing or marketing electric service." In that vein, the Staff has recommended that 20 VAC 5-312-20 D of the Commission's retail access rules be amended to require licensed suppliers and aggregators to maintain information in their books and records identifying persons or entities with whom they have marketing relationships. This requirement, in Staff's view, would assist the Commission in carrying out its responsibilities under § 56-593 of the Restructuring Act with respect to deceptive or unfair marketing practices.

The Report also reviews several other proposals that were discussed by the Work Group, but not recommended by the Staff. These suggestions include a proposal to establish two levels of licensure for aggregators, establishing a lower level of licensure with reduced filing obligations and filing fees. Closely related to this suggestion was an additional proposal to require licensure for some aggregators and not for others. The Report also notes that the Restructuring Act's current provisions concerning "opt in" municipal aggregation (§ 56-589)

were discussed by the Work Group, but no changes were suggested at this time by any members of the Work Group. The Staff made no recommendations concerning municipal aggregation.

Finally, the Commission Staff and Work Group reviewed the issue of contractual relationships between aggregators and their customers (and also as between aggregators and suppliers or other aggregators). The Staff made no recommendations for new consumer protection provisions to be incorporated into aggregation contracts, i.e., provisions that would be over and above those contractual requirements presently imposed by the Retail Access Rules for both suppliers and aggregators. Additionally, the Staff and Work Group reviewed the issue of aggregation by entities affiliated with incumbent electric utilities, and the impact of that relationship—one currently authorized by the Restructuring Act—on the development of effective competition within the Commonwealth. No changes in this area were recommended by the Work Group or by the Staff.

Subsequent to the Staff's filing of its Report, we issued an order dated September 20, 2002 ("September 20 Order"), by which we directed interested parties to file comments in response to the Report on or before October 8, 2002. We received comments from three parties: Appalachian Power Company ("APCO"); the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"); and the Virginia, Maryland, & Delaware Association of Electric Cooperatives ("Cooperatives").[3]

In its comments, APCO states that it agrees with the changes to the Retail Access Rules proposed by the Staff, i.e., requiring licensed CSPs and aggregators to maintain information about their marketing activities and persons conducting them. However, APCO expressed

[3] The Virginia, Maryland & Delaware Association of Electric Cooperatives filed comments on behalf of A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Inc., Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative, Inc.

concern about granting aggregators waivers of certain provisions of the Retail Access Rules (pursuant to 20 VAC 5-312-20 A). In particular, APCO believes that aggregators should not be granted waivers of EDI compliance or certification *unless* LDCs can conduct transactions directly with those CSPs (i) providing supply service to aggregators, and (ii) registered with the LDCs. Put another way, APCO is concerned that APCO and other LDCs might be required to maintain communications on a non-EDI basis with an aggregator that has received a waiver of the EDI requirements under the rules.

APCO states that, if the Commission decides to adopt a case-by-case waiver approach, it should retain jurisdiction in this proceeding to re-examine that approach (after a reasonable period of time) to ensure that the waivers result in an overall policy creating efficient transactions between local distribution companies and competitive service providers.

The Consumer Counsel states that it generally supports the Report's identification of current issues concerning the regulation of aggregation services and Staff's recommendations therein. The Consumer Counsel also states that the recommendations made by the Staff appear to properly protect consumers and are consistent with the goal of developing effective competition in electric service in the public interest.

The comments of the Cooperatives also generally support the conclusions contained in the Report and the proposed amendment to the Retail Access Rules. The Cooperatives state that they support exploring retail access strategies that will generate economic savings for their consumer/owners.

However, the Cooperatives assert that no further amendments to the Retail Access Rules requiring the Cooperative to implement system changes should be adopted by the Commission unless the economic benefit enjoyed by consumers resulting from these changes will demonstrably exceed the cost of implementation. The Cooperatives note that the Report

discusses the ability of an aggregator to request a waiver of any cumbersome or unnecessary registration requirements. However, the Cooperatives seek assurances that the Commission will not waive those requirements currently contained in the Retail Access rules that protect the personal information of their member/owners.

NOW THE COMMISSION, having examined the Staff's Report, and the comments filed in response thereto by APCO, Consumer Counsel, and the Cooperatives, finds that the rule amendment proposed by the Staff should be published in the Virginia Register and made available for further and formal comment. We appreciate the participation of interested parties and stakeholders who contributed to the development of issues this Commission identified in its order that established this investigation as part of this Order. We will briefly address several of the issues the parties raised in this proceeding.

First, with respect to the issue of marketing on behalf of licensed CSPs and aggregators, we find the Staff's conclusions sensible as well as grounded in the statutory provisions of the Restructuring Act. As a practical matter, any person or entity engaged in marketing activities concerning the competitive sales of electricity will either be a licensed CSP or aggregator, or someone acting in an agency capacity on their behalf. In either event, the provisions of § 56-593 provide this Commission ample authority to address any inappropriate marketing activities associated with the competitive sale of retail generation, or the aggregation of retail customers. Accordingly, and by this Order, we will invite comment on a proposed amendment to 20 VAC 5-312-20 D of the Retail Access Rules, such amendment requiring licensed aggregators and CSPs to maintain information identifying all persons or entities conducting marketing activities with them or on their behalf.[4]

[4] The proposed rule included with this Order is framed slightly differently than the one included in the Report. The language now amending 20 VAC 5-312-20 D (as set forth in Attachment A) makes the maintenance of marketing-related information an explicit obligation imposed upon licensed competitive service providers. The language

Next, we will comment briefly on the issue raised by APCO and discussed above. APCO is concerned that one could imply from the Report that this Commission could waive EDI certification for an aggregator while concurrently requiring LDCs to communicate with them on a non-EDI basis. We conclude, however, that in citing the possibility of case-by-case waivers of Retail Access Rules, the Staff was simply emphasizing the current availability of flexibility in the licensure process afforded by 20 VAC 5-312-20 A. This provision has been a part of the Retail Access Rules since their original adoption.

To specifically address APCO's concerns, however, and based on information on file with the Commission concerning aggregators currently licensed by this Commission, it would appear that most aggregators intend to contract with CSPs for supply services. Such CSPs, in turn, will undoubtedly be EDI certified for purposes of communicating electronically with LDCs. With respect to relationships between an LDC and a CSP, we are not aware of anything in the Retail Access Rules requiring LDCs to communicate electronically with more than one party to such an arrangement.[5] That party, in all likelihood would be the CSP.

Nonetheless, like APCO, we want to ensure that our policy creates efficient transactions between LDCs, CSPs, and aggregators. As such, we will direct our Staff to monitor aggregators' requests for waivers of EDI compliance, or compliance with the registration procedures included in the local distribution companies' tariffs.

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suggested by Staff in its Report stated that such an obligation could be required by the Commission. We would also note that while the focus of this Order is the aggregation of retail electricity customers and issues related thereto, the amendment to 20 VAC 5-312-20 D will be applicable to competitive service providers of natural gas as well as to those furnishing electricity.

[5] Moreover, we would note that in our recent Order approving changes to our Retail Access Rules with respect to consolidated billing, 20 VAC 5-312-90 C 4 was amended to clarify that, for billing purposes, LDCs would not be required to exchange billing information for any customer account with more than one competitive service provider for the same billing period. Commonwealth of Virginia, ex. rel. State Corporation Commission. Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for consolidated billing services. Case No. PUE-2001-00297. (Final Order dated August 21, 2002.)

We will also comment briefly on an issue that we identified in our order establishing this investigation, namely aggregation activities by affiliates of incumbent electric utilities. As we noted in the March 18, 2002, Order, aggregation activities by such affiliates may impact the development of competition within incumbents' service territories. To be clear, the development of a competitive market was our primary focus in asking that this issue be addressed.

Dominion Retail, a CSP affiliate of Dominion Virginia Power and a Work Group participant, noted in its response to Staff questions (and made part of the Staff Report) that codes of conduct in the Retail Access Rules govern the marketing practices of aggregators affiliated with LDCs.[6] Moreover, the company notes, the General Assembly authorized incumbent affiliates to engage in retail activities.[7] Dominion Virginia Power filed comments to the same effect. AEP's comments included in the Staff report also emphasized the presence of the codes of conduct in the Commission's Retail Access Rules, and urged that aggregators affiliated with incumbents not be treated any differently than unaffiliated aggregators.

Another Work Group participant, Energy Consultants, Inc. ("Energy Consultants"), however, provided a different view of the issue stating that it had concerns about "the market power of branding," i.e., that an incumbent's affiliate effectively projects the strength, reliability and infrastructure of the incumbent. Energy Consultants also noted that electricity customers may perceive risk in shifting their electric service away from incumbents. Consequently, Energy Consultants predicts that a substantial majority of customers that switch will do so to the affiliate

[6] 20 VAC 5-312-30.

[7] We note, in that regard, that § 56-587 D authorizes affiliates of incumbent electric utilities to be licensed as CSPs and as aggregators.

of their existing utility.[8] This company goes on to state that "[T]he risk of 'unintended consequences,' i.e., an unregulated monopoly, needs to be monitored very carefully."

As emphasized by Dominion Retail, the Restructuring Act (in § 56-587 D) does specifically authorize affiliates of incumbents to be licensed as CSPs or aggregators. It is also true that our Retail Access Rules in 20 VAC 5-312-30 specifically address marketing issues associated with competitive service providers (a defined term in these rules that encompasses both CSPs and aggregators) affiliated with incumbent electric utilities. Subsection A of this rule permits such affiliated providers to use the names and logos of their affiliated LDCs so long as they indicate the distinction between the two entities. However provisions in subsection F prohibit joint advertising and marketing activities; additional provisions—particularly in subsections B, C and H—require these affiliated companies to maintain separate business structures, personnel and operations. Subsection D emphasizes that LDCs are prohibited from giving any "undue preference" to affiliated competitive service providers.

The concerns of Energy Consultants are unlikely to be resolved by the Codes of Conduct we adopted in our Retail Access Rules, however. At bottom, Energy Consultants' core concern is that incumbent-affiliated CSPs and aggregators are permitted to provide competitive services in the service territories of affiliated LDCs—particularly to the extent that these affiliated companies share common "branding." It would appear from the comments incorporated into the Report, and also from the comments concerning the Report filed in response to our September 20, 2002 Order, that the only party articulating concern about the market power

[8] Energy Consultants cited the local telephone market as a "classic example" of how incumbent local exchange carriers have established virtual monopolies and prevented the emergence of serious competition. The key factor, according to Energy Consultants, is the incumbent's market power. "[S]o long as the affiliate of the incumbent utilities can enter the same market area as the incumbent utility with essentially the same branding as perceived by the customer," Energy Consultants stated in their comments, "it will bring significant market power whether they call themselves a CSP or an aggregator."

implications of such affiliate activities was Energy Consultants. However, we think that Energy Consultants' recommendation that this situation be monitored is a good one, and we will direct the Staff to do so. Moreover, in conjunction with such monitoring, by this Order we will direct the Staff to submit a report on or about July 1, 2004, assessing the impact on the development of a competitive market, of incumbent-affiliated competitive service providers (as that term is presently defined in our Retail Access Rules) and their activities in affiliated LDCs' service territories.

We also directed the Staff and the Work Group as part of this investigation to review contractual relationships between aggregators and their customers, particularly with respect to contract length and liquidated damages provisions. Clearly, contract length is of some consequence to aggregators. By "locking up" a finite load for a specified period—the longer the better, presumably—an aggregator can better shop for a competitive supplier with which to marry up the load aggregated.

May there be circumstances, however, in which the length of an aggregation contract may actually operate to deter the development of competition? To the extent that such contracts prescribe liquidated damages to be paid by aggregation customers seeking to exit that arrangement prior to the expiration of such contracts, might such provisions also serve to deter the development of a competitive market? As noted in the Report, in written comments concerning these two issues, Dominion Virginia Power, Dominion Retail and Energy Consultants suggested, in the collective, that new rules addressing these issues with respect to aggregators were not seen as necessary at this time.

While not specifically addressed in the parties' comments, or discussed in the Report, it would appear that one potential concern with respect to the development of competition would be aggregation arrangements initiated by incumbent-affiliated aggregators that "lock in"

substantial load in their affiliated LDCs' service territories. On one hand, such activity may serve to "prime the pump" for retail shopping activity in the near term. However, the fact that this activity comes courtesy of an incumbent's affiliate could be counter-productive, discouraging competitive entry by unaffiliated CSPs or aggregators over the longer haul. This would be particularly the case if the aggregation contracts simply committed the customer to the aggregation pool for a lengthy period of time, with no corresponding contractual assurance of any actual savings during that period.

Another deterrent to competitive market development might be embedded in requirements that aggregation customers pay liquidated damages if they exit aggregation pools prior to the expiration of such aggregation contracts. The presence of liquidated damages provisions might deter aggregation customers from taking advantage of a better competitive offers—either as a general matter, or because the liquidated damages to be paid would wipe out any potential savings from other competitive offers.[9] Overall, we think this issue warrants further monitoring on the part of the Staff as the markets in Virginia continue to open to retail choice. By this Order, we will direct the Staff to file a report with this Commission on or about July 1, 2004, assessing the impact of aggregation contracts on the development of competitive retail markets in the Commonwealth.

Finally, the Commission is of the opinion and finds that the proposed modification to 20 VAC 5-312-20 D, requiring that competitive service providers (which, by definition in these rules, includes both aggregators and CSPs) maintain records identifying persons or entities

[9] Closely related is the cancellation rights customers are afforded under the Retail Access Rules. Under these rules, customers may cancel contracts entered into with CSPs or aggregators (collectively "competitive service providers") within 10 days of a competitive supplier mailing a competitive supplier enrollment request to an LDC, without penalty. However, an aggregation contract that simply promises the potential for savings if the aggregator can find them (but does not guarantee them) coupled with liquidated damages provisions that might be applicable regardless of whether customers actually take service from competitive suppliers during the term of the aggregation contract, could effectively eliminate the protections that the right to cancel under 20 VAC 5-312-70 C might otherwise afford.

performing promotional or marketing activities on behalf of, or in conjunction with, a competitive service provider, should be published in the Virginia Register of Regulations. The Commission further finds that interested persons should be afforded an opportunity to file written comments on such regulation, as the same is proposed to be amended, appended hereto as Attachment A.

ACCORDINGLY, IT IS ORDERED THAT:

(1) Interested persons may obtain a copy of this Order, together with a copy of the proposed amended rule upon which comment is sought (Attachment A, hereto), by directing a request in writing for the same to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Such requests shall refer to Case No. PUE-2002-00174.

(2) A copy of this Order and the proposed amended regulation shall also be made available for public review in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during its regular hours of operation, Monday through Friday, from 8:15 a.m. to 5:00 p.m.

(3) On or before December 17, 2002, any person desiring to comment upon the proposed amended regulation shall file an original and fifteen (15) copies of their comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, making reference in such comments to Case No. PUE-2002-00174. Such comment should set forth the person's interest in this proceeding, and if such person objects to any provision of the proposed amended regulation, proposed alternative language for the regulation should be included in such person's comments.

(4) Any person desiring a hearing in this matter shall file such a request with the comments on or before December 17, 2002, and shall state in detail why a hearing is necessary.

Such a request should identify the factual issues likely in dispute upon which the person seeks a hearing, together with the evidence expected to be introduced at any hearing. If no sufficient request for a hearing is received, the Commission may enter an order promulgating the amended regulation upon the basis of the written comments received.

(5) The Commission Staff shall monitor any requests by aggregators for waivers of EDI compliance or compliance with the registration process included in the tariffs of the local distribution companies. Specifically, Staff, in its review of a prospective aggregator's license application, shall evaluate whether any such requested waivers would impact the efficiency of transactions between local distribution companies, competitive service providers, and aggregators. A summary of such evaluations shall be included in the Staff's reports concerning each such license application.

(6) The Staff shall further monitor the activities of licensed aggregators affiliated with incumbent utilities, and providing aggregation services within the service territories of such incumbents to determine whether such affiliated relationships, coupled with the nature, provisions and duration of contracts with customers in such service territories, may be deterring the development of a competitive market for retail generation services within that service territory. The Staff shall also monitor the nature, provisions and duration of aggregation contracts between retail electricity customers and aggregators not affiliated within any Virginia incumbent electric utility, for the purposes of assessing the impact of such contracts on the development of a competitive retail electricity market within the Commonwealth. On or about July 1, 2004, the Staff shall submit to the Commission a report summarizing its findings and recommendations concerning the monitoring activities required pursuant to this Ordering Paragraph.

20 VAC 5-312-20. General provisions.

A. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. The provisions of this chapter may be enforced by the State Corporation Commission by any means authorized under applicable law or regulation. Enforcement actions may include, without limitation, the refusal to issue any license for which application has been made, and the revocation or suspension of any license previously granted. The provisions of this chapter shall not be deemed to preclude a person aggrieved by a violation of these regulations from pursuing any civil relief that may be available under state or federal law, including, without limitation, private actions for damages or other equitable relief.

C. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

D. The State Corporation Commission maintains the right to inspect the books, papers, records and documents, and to require reports and statements, of a competitive service provider as required to verify qualifications to conduct business within the Commonwealth, to support affiliate transactions, to investigate allegations of violations of this chapter, or to resolve a complaint filed against a competitive service provider. Every competitive service provider

licensed pursuant to this chapter shall establish and maintain records identifying persons or entities performing promotional or marketing activities on behalf of or in conjunction with such competitive service provider.

E. Absent the designation of a default service provider as determined by the State Corporation Commission pursuant to § 56-585 of the Code of Virginia, the local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers that do not select a competitive service provider and to customers that chose a competitive service provider but whose service is terminated for any reason.

F. A competitive service provider selling electricity supply service or natural gas supply service, or both, at retail shall:

1. Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers.

2. Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council, and the Federal Energy Regulatory Commission, or any successor agencies thereto.

3. Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity.

G. The local distribution company and a competitive service provider shall not:

1. Suggest that the services provided by the local distribution company are of any different quality when competitive energy services are purchased from a particular competitive service provider; or

2. Suggest that the competitive energy services provided by a competitive service provider are being provided by the local distribution company rather than the competitive service provider.

H. The local distribution company shall conduct its forecasting, scheduling, balancing, and settlement activities in a nondiscriminatory and reasonably transparent manner.

I. The local distribution company or competitive service provider shall bear the responsibility for metering as provided by legislation and implemented by the State Corporation Commission.

J. The local distribution company and a competitive service provider, shall coordinate their customer communication activities with the State Corporation Commission's statewide consumer education campaign.

K. The local distribution company and a competitive service provider shall adhere to standard practices for exchanging data and information in an electronic medium as specified by the VAEDT and filed with the State Corporation Commission or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission. In the event the parties agree to initially use a means other than those specified by VAEDT or the local distribution company's tariff, then the competitive service provider shall file a plan with the State

Corporation Commission's Division of Economics and Finance to implement VAEDT or tariff approved standards within 180 days of the initial retail offering.

L. The local distribution company and a competitive service provider that is responsible for exchanging customer information electronically with such local distribution company shall, except as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, successfully complete EDI testing and receive certification for all EDI transactions, as outlined in the VAEDT EDI Test Plan, prior to actively enrolling customers, except as permitted by subsection K of this section.

M. A competitive service provider offering billing service that requires the direct delivery of a bill to a customer and that requires the electronic exchange of data with the local distribution company shall furnish, prior to enrolling the customer, a sample bill produced from the data exchanged in the EDI certification process, or comparable electronic data exchange process, as described in subsection L of this section, or a sample bill produced similarly elsewhere, to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance.

N. The local distribution company shall file with the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance a monthly report which shall, at a minimum, include all cancellation requests alleging a customer was enrolled without authorization. Such reports shall include: (i) the approximate date of the enrollment; (ii) the identity of the competitive service provider involved; (iii) the name and address of the customer that cancelled such enrollment; and (iv) if readily available, a brief statement regarding the customer's explanation for the cancellation. Such reports shall be reviewed by commission staff

and regarded as confidential unless and until the State Corporation Commission orders otherwise.

O. The local distribution company shall file with the State Corporation Commission's Division of Economics and Finance a quarterly report providing a detailed breakdown of residential and nonresidential customer switching activity. Such reports shall include, for the local distribution company, the total number of customers and corresponding amount of load eligible to switch; and, for each competitive service provider, the total number of customers and corresponding amount of load served. The amount of load shall be measured in MW or dekatherm capacity of peak load contribution and in kWh or therms of associated energy. Such reports shall be reviewed by commission staff and information specific to individual competitive service providers shall be regarded as confidential unless and until the State Corporation Commission orders otherwise.

P. By March 31 of each year, the provider of electricity supply service shall report to its customers and file a report with the State Corporation Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. If such data is unavailable, the provider of electricity supply service shall file a report with the State Corporation Commission stating why it is not feasible to submit any portion of such data.

Q. A competitive service provider shall file a report with the State Corporation Commission by March 31 of each year to update all information required in the original application for licensure. A $100 administrative fee payable to the State Corporation Commission shall accompany this report.

R. A competitive service provider shall inform the State Corporation Commission within 30 days of the following: (i) any change in its name, address and telephone numbers; (ii) any change in information regarding its affiliate status with the local distribution company; (iii) any changes to information provided pursuant to 20 VAC 5-312-40 A 13; and (iv) any changes to information provided pursuant to 20 VAC 5-312-40 A 15.

S. If a filing with the State Corporation Commission, made pursuant to this chapter, contains information that the local distribution company or a competitive service provider claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless the State Corporation Commission orders otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission. Filings containing confidential or redacted information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential or redacted information, including supporting material, shall be clearly marked within the filing.